

(3) *Time information furnished.* (i) If a foreign investment company was registered with the Securities and Exchange Commission on the date of election, all the information required by subparagraph (2) of this paragraph must have been submitted with the election.

(ii) If a foreign investment company made its election before it was so registered, the information required by subparagraph (2) (i), (ii), and (iii) of this paragraph must have been submitted with the election and the information required by subparagraph (2) (iv), (v), and (vi) of this paragraph must have been submitted within 60 days following receipt by the Securities and Exchange Commission of Form N-8A.

(d) *Termination of election*—(1) *General.* Section 1247(b) provides that the election of a foreign investment company under section 1247(a) shall permanently terminate as of the close of the taxable year preceding its first taxable year in which any of the following occurs:

(i) The company fails to comply with the provisions of section 1247(a)(1) (A), (B), or (C), unless it is shown that such failure is due to reasonable cause and not due to willful neglect;

(ii) The company is a foreign personal holding company as defined in section 552; or

(iii) The company ceases to be a registered foreign investment company which is described in paragraph (b) of this section. A company ceases to be a registered company, for example, as of the time the Securities and Exchange Commission revokes its order permitting registration of the company.

(2) *Reasonable cause.* Whether a failure by a foreign investment company to comply with the provisions of section 1247(a)(1) (A), (B), or (C) is due to reasonable cause and not due to willful neglect depends on whether the company exercised ordinary business care and prudence. For example, if in determining its taxable income under section 1247(a) the company relied in good faith upon estimates and opinions of independent certified public accountants or other experts which are also used for purposes of its financial statements filed with the Securities and Exchange Commission under the Invest-

ment Company Act of 1940, such reliance would constitute reasonable cause for purposes of this paragraph. In such a case, the company's election under section 1247(a) for the taxable year would not be terminated nor would the company be required to make an additional distribution for such taxable year in order to comply with the provisions of section 1247(a)(1)(A).

[T.D. 6798, 30 FR 1174, Feb. 4, 1965]

**§ 1.1247-2 Computation and distribution of taxable income.**

(a) *In general.* Taxable income of a foreign investment company means taxable income as defined in section 63(a), computed without regard to subchapter N, chapter 1 of the Code, and in accordance with the following rules:

(1) There shall be excluded the excess, if any, of the company's net long-term capital gain over the net short-term capital loss. See § 1.1247-3 for the manner of computing such excess.

(2) The deduction provided in section 172 (relating to net operating losses) shall not be allowed.

(3) Except for the deduction provided in section 248 (relating to organizational expenditures), the special deductions provided for corporations in part VIII (sections 241 and following), subchapter B, chapter 1 of the Code shall not be allowed.

(4) In computing the amount of the deduction allowed under section 164 there shall be included taxes paid or accrued during the taxable year which are imposed by the United States or by the country under the laws of which the company is created or organized. See, however, § 1.1247-4.

(b) *Election to distribute taxable income after close of taxable year.* A company may elect under section 1247(a)(2)(B), in respect of taxable income for a taxable year, to treat a distribution made not later than 2 months and 15 days after the close of such taxable year as a distribution made during such taxable year of such taxable income. The company shall make the election by attaching to the information return required by paragraph (c)(1) of § 1.1247-5 for such taxable year a statement setting forth the amount of each distribution (or portion thereof) to which the election applies and the date of each

such distribution. The election shall be irrevocable after the expiration of the time for filing such information return. The distribution (or portion thereof) to which the election applies shall be considered as paid out of the earnings and profits of the taxable year for which such election is made, and not out of the earnings and profits of the taxable year in which the distribution is actually made. A distribution to which this paragraph applies shall be includible in the gross income of a shareholder of the foreign investment company for his taxable year in which received or accrued.

[T.D. 6798, 30 FR 1175, Feb. 4, 1965]

### § 1.1247-3 Treatment of capital gains.

(a) *Treatment by the company*—(1) *In general.* If an election to distribute income currently pursuant to section 1247(a) is in effect for a taxable year of a foreign investment company, the company shall designate (in the manner described in subparagraph (3) of this paragraph) to each shareholder his pro rata amount of the excess of the net long-term capital gain over the net short-term capital loss for the company's taxable year, and the portion thereof which is being distributed to each such shareholder. See section 1247(a)(1)(B). Except as provided in subparagraph (2) of this paragraph, the company shall compute such excess (hereinafter referred to as *excess capital gains*) as if such company were a domestic corporation, but without regard to subchapter N, chapter 1 of the Code. See paragraph (d) of § 1.1247-1 for rules relating to termination of election under section 1247(a) for failure to properly compute or to properly designate excess capital gains. A company may make an irrevocable election (by notifying its shareholders as provided in subparagraph (3) of this paragraph) to distribute, on or before the 45th day following the close of its taxable year, all or a portion of the excess capital gains and have any such distribution treated as if made during such taxable year.

(2) *Rules for computing capital gains and losses.* Generally, the adjusted basis of property held by a foreign investment company shall be its cost adjusted in accordance with the applica-

ble provisions of the Code. However, in respect of property held by a foreign investment company on the first day of the first taxable year for which the election under section 1247(a) applies, the amounts shown on such day in the permanent books of account, records, and other documents of the company shall, at the option of the company, be accepted as the adjusted basis of such property, if on such day such books, records, and other documents were being maintained in the manner prescribed by regulations under section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a-30). In computing capital gains and losses of a foreign investment company under section 1247, the provisions of section 1212 (relating to allowance of capital loss carryover) shall not apply to any capital loss incurred in or with respect to taxable years before the first taxable year for which the election under section 1247(a) applies. See section 1247(a)(2)(C).

(3) *Notice to shareholders.* The company shall designate by written notice, mailed on or before the 45th day following the close of its taxable year:

(i) To each person who is a shareholder at the close of such taxable year, his pro rata amount of the portion of the excess capital gains for such year which was not distributed, and

(ii) To each person who received a distribution of excess capital gains with respect to such taxable year, the amount and the date of each such distribution.

Each notice shall show the name and address of the foreign investment company and the taxable year of the company for which the designation is made.

(b) *Treatment of capital gains by qualified shareholder*—(1) *Definition of qualified shareholder.* (i) The term *qualified shareholder* means any shareholder of a registered foreign investment company who is a United States person (as defined in section 7701(a)(30)), other than a shareholder described in subdivision (ii) of this subparagraph.

(ii) A United States person shall not be treated as a qualified shareholder for a taxable year if in his return for such taxable year (or for any prior taxable year) he did not include, in computing his long-term capital gains, his